



4. Defendant Denise Merrill is the Connecticut Secretary of State. Secretary Merrill is the State's chief election official and has ultimate authority over the enforcement of the statutory provisions challenged in this suit. She oversees, among other things, (a) enforcement of the State's electoral process; (b) voter registration; (c) the content, instructions, and requirements for filing nomination petitions; and (d) the striking of nomination petitions that do not comply with her enforcement of the challenged provisions at the time nomination petitions are filed with her office. Defendant Merrill is sued in her official capacity only.

### **Facts**

#### ***The Libertarian Party***

5. The Libertarian Party of Connecticut's mission is to engage in political and educational activities in Connecticut and to elect candidates at all levels of government who support civil and economic liberty by shrinking the size, power, and intrusiveness of state and federal governments to constitutionally prescribed limits.

6. In furtherance of the Party's mission, candidates representing the Party have run in every election cycle from 2010 to 2014, and, in six of the last seven cycles, the national Libertarian Party's candidate has appeared on Connecticut ballots for President and Vice President.

7. The Libertarian Party of Connecticut plans to field candidates for the 2016 state and federal elections, and wishes to begin the procedures necessary to put its candidates on the ballots as soon as lawfully possible.

8. However, the Party's candidates have, in the past, been refused access to the ballot as a direct and proximate result of the restrictions challenged in this action, and the Party's candidates will be refused access to the ballot in the 2016 ballot by those same restrictions.

***Election Ballot Access in Connecticut***

9. For purposes of determining whether a candidate for public office may appear on an election ballot, Connecticut divides candidates into three categories: those nominated by a major party, those nominated by a minor party, and those who are not affiliated with either a major or minor party. Conn. Gen. Stat. § 9-379.

10. A major party is either “a political party . . . whose candidate for Governor at the last-preceding election . . . received . . . at least twenty per cent of the whole number of votes cast for all candidates for Governor,” or, “a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state.” *Id.* § 9-372(5).

11. A minor party is “a political party . . . which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office . . . at least one per cent of the whole number of votes cast for all candidates for such office at such election.” *Id.* § 9-372(6).

12. Candidates from major parties may be listed on election ballots without prior approval from the defendant so long as the candidates are endorsed by their respective parties. *Id.* § 9-388 (statewide and district offices); *id.* § 9-390 (municipal offices).

13. Candidates from minor parties may be listed on election ballots without prior approval of the defendant so long as their respective parties certify that the candidates are the parties’ nominees. *Id.* § 9-452.

14. However, candidates not nominated by a major or minor party may only be listed on an election ballot if they gather signatures on a nominating petition that is approved by the defendant. *Id.* § 9-379.

15. In order to place a candidate on the election ballot, a nominating petition must be supported by the signatures of registered Connecticut voters. The number of signatures necessary is the smaller of either 7,500, or a number equal to “one per cent of the votes cast for the same office or offices at the last-preceding election, or the number of qualified electors prescribed by [Conn. Gen. Stat.] § 9-380 with regard to newly-created offices.” *Id.* § 9-453d.

16. Nominating petitions are distributed by the defendant, in a form prescribed by her, and no petitioning candidate is permitted to begin collecting signatures prior to January 1st of the year of the election in which the candidate wishes to participate. *Id.* § 9-453b.

17. The Libertarian Party of Connecticut does not qualify as a “major party,” and only qualifies as a “minor party” with respect to three offices: the 20th State Senate District, the 2nd United States Congressional District, and the United States Senate.

18. Hence, the vast majority of the Party’s efforts to place its candidates on the ballot are subject to the rules for petitioning parties, and it must successfully have its nominating petitions approved by the Secretary of State in order for its candidates to appear on ballots for races in which it is not a minor party.

***Circulator Residency Requirement***

19. A person who collects signatures on a candidate’s nominating petition is known as a “circulator.” Conn. Gen. Stat. § 9-453e. In relevant part, each circulator must “be a United States citizen . . . and a resident of a town in this state.” *Id.*

20. Section 9-453j requires the nominating petition to contain “a statement as to the residency in this state and eligibility of the circulator and authenticity of the signatures thereon,” which the circulator must sign under penalty of perjury. That statement must include the

circulator's "residence address, including the town in this state in which such circulator is a resident."

21. Section 9-453o requires that the defendant reject any page of a nominating petition if "the page does not contain a statement by the circulator as to the residency in this state and eligibility of the circulator and authenticity of the signatures thereon . . . or upon which such statement of the circulator is incomplete in any respect."

22. The requirement that circulators reside in Connecticut means that any non-Connecticut resident wishing to act as a circulator must be accompanied by a Connecticut resident while circulating nomination petitions.

23. The requirement that non-resident circulators be accompanied by Connecticut residents reduces their ability to work efficiently to gather signatures.

24. As a direct and proximate result of the requirement that circulators reside in Connecticut, the Party is effectively prohibited from contracting with out-of-state paid circulators.

25. Limiting the pool of professional circulators to in-state professionals creates a monopoly for Connecticut professional circulators, thereby decreasing the ability of the Party to negotiate favorable contract terms, with the effect of dramatically increasing the cost of nomination petition signature drives.

26. Additionally, the Party's experience is that out-of-state professional circulators have generated a much higher percentages of valid signatures than the few in-state professional circulators and volunteer circulators. The prohibition on non-resident circulators therefore reduces the quality of circulators that the Party may use, which in turn reduces the percentage of

valid signatures and increases the cost of securing sufficient valid signatures to place the Party's candidates on the State's general election ballot.

27. The requirement that all circulators be Connecticut residents places a severe burden on the Party by making it more difficult for it to disseminate its political views, to choose the most effective way of conveying its message, to associate in a meaningful way with prospective circulators for the purpose of eliciting political change, to gain access to the ballot, and to utilize the endorsement of its candidates, which can be implicit in a circulator's efforts to gather signatures on the candidates' behalf.

***Application of the Challenged Provisions***

28. As a result of the enforcement of the unconstitutional requirements of the challenged provisions in the past, the Party has not learned whether its candidates have qualified to be placed on the ballot until mid-September, fewer than two months before election day.

29. Due to the efforts required to obtain sufficient signatures, and to the uncertainty as to whether the petition effort will be successful for any given candidate, the Party can allocate only limited funding for actual campaigning. The Party must also fundraise specifically to pay for the petition circulating process.

30. The short period of time between the approval of petition candidates and election day places the Party's candidates who do qualify for the ballot at a distinct disadvantage against non-petition candidates, who are able to begin campaigning at a much earlier date.

31. Additionally, the short period of time between the approval or rejection of petition candidates and election day makes it virtually impossible for the Party to challenge the results of a petition denial in court. *See Libertarian Party of Conn. v. Bysiewicz*, No. 3:08-CV-1513 (JCH), 2008 U.S. Dist. LEXIS 97970, at \*31 (D. Conn. Oct. 23, 2008) (denying relief in part because it would not be possible to print new ballots in time for the election); *see generally*

*Reale v. Bysiewicz*, 298 Conn. 808, 814 (2010) (noting that the Party's candidate for the November 2010 Congressional election was informed that his petition was denied on September 8th of that year).

32. Finally, the short periods of time between (1) the present date and January 1, 2016, on which the Party and its candidates will be permitted to begin circulating petitions; and (2) January 1, 2016 and the 2016 elections mean that the Party will suffer immediate and irreparable harm if this Court does not grant *ex parte* relief and enter a temporary restraining order. The Party will suffer immediate and irreparable harm if it is not afforded the ability to use out-of-state circulators from the first day of the petitioning period.

**Count One: Facial Challenge to § 9-453e's Residency Requirement**

33. Because the state residency requirement imposed on petition circulators is not narrowly tailored to further a compelling governmental interest, Conn. Gen. Stat. § 9-453e facially violates the First Amendment to the United States Constitution.

34. Alternatively, because no state regulatory interest justifies the state residency requirement imposed on petition circulators, Conn. Gen. Stat. § 9-453e facially violates the First Amendment.

35. Accordingly, Defendant's enforcement of Conn. Gen. Stat. § 9-453e, § 9-453j, § 9-453k, and § 9-453o is the direct and proximate cause of the impairment of rights guaranteed to the Libertarian Party of Connecticut under the First Amendment.

**Count Two: As-Applied Challenge to § 9-453e's Residency Requirement**

36. Because the state residency requirement imposed on petition circulators is not narrowly tailored to further a compelling governmental interest, Conn. Gen. Stat. § 9-453e, as enforced against the Libertarian Party of Connecticut, violates the First Amendment..

37. Alternatively, because no state regulatory interest justifies the state residency requirement imposed on petition circulators, Conn. Gen. Stat. § 9-453e, as enforced against the Libertarian Party of Connecticut, violates the First Amendment.

38. Accordingly, Defendant's enforcement of Conn. Gen. Stat. § 9-453e, § 9-453j, § 9-453k, and § 9-453o is the direct and proximate cause of the impairment of rights guaranteed to the Libertarian Party of Connecticut.

### **Request for Relief**

Accordingly, the Libertarian Party of Connecticut respectfully requests that the Court:

- (1) Enter a declaratory judgment against all challenged provisions of the Connecticut General Statutes detailed above, including, but not limited to:
  - a declaring Conn. Gen. Stat. § 9-453e unconstitutional to the extent that it prohibits non-Connecticut residents from serving as a circulator or in any other way prohibits non-Connecticut residents from executing any document or section of a nomination petition required to be executed to lawfully file a nomination petition with defendants;
  - b declaring Conn. Gen. Stat. § 9-453j unconstitutional to the extent that it requires nomination petitions to contain a certification that the circulator is a Connecticut resident;
  - c declaring Conn. Gen. Stat. § 9-453k unconstitutional to the extent that it prohibits Defendant and town clerks from accepting nominating petitions that do not contain the unconstitutional certification required by § 9-453j; and
  - d declaring Conn. Gen. Stat. § 9-453o unconstitutional to the extent that it requires Defendant to reject any nominating petition that does not comply with the unconstitutional requirements of § 9-453j.
- (2) Enter a permanent injunction enjoining Defendant from enforcing the challenged provisions and interpretations of the Connecticut General Statutes against the Libertarian Party of Connecticut, including:
  - a enjoining Defendant from enforcing Conn. Gen. Stat. § 9-453e to the extent that it prohibits non-Connecticut residents from serving as a

- circulator or in any other way prohibits non-Connecticut residents from executing any document or section of a nomination petition required to be executed to lawfully file a nomination petition with Defendant;
- b enjoining Defendant from enforcing Conn. Gen. Stat. § 9-453j to the extent that it requires nomination petitions to contain a certification that the circulator is a Connecticut resident;
  - c enjoining Defendant from enforcing Conn. Gen. Stat. § 9-453k to the extent that it prohibits Defendant and town clerks from accepting nominating petitions that do not contain the unconstitutional certification required by § 9-453j; and
  - d enjoining Defendant from enforcing Conn. Gen. Stat. § 9-453o to the extent that it requires Defendant to reject any nominating petition that does not comply with the unconstitutional requirements of § 9-453j.
- (3) Award the Libertarian Party of Connecticut the costs of this action together with reasonable attorney fees and expenses pursuant to 42 U.S.C. § 1988; and
- (4) Retain jurisdiction over this action and grant the Libertarian Party of Connecticut any other relief that the Court sees fit.

*[signature block follows on next page]*

*Libertarian Party of Connecticut*

/s/ Stanley A. Twardy  
Stanley A. Twardy (ct05096)  
*satwardy@daypitney.com*  
One Canterbury Green  
201 Broad Street  
Stamford, CT 06901  
(203) 977-7300  
(203) 977-7301 (fax)

and

Daniel E. Wenner (ct27852)  
*dwenner@daypitney.com*  
John W. Cerreta (ct28919)  
*jcerreta@daypitney.com*  
Daniel J. Raccuia (ct29535)  
*draccuia@daypitney.com*  
Day Pitney LLP  
242 Trumbull Street  
Hartford, Connecticut 06103  
(860) 275-0100  
(860) 275-0343 (fax)

and

Dan Barrett (ct29816)  
*dbarrett@acluct.org*  
ACLU Foundation of Connecticut  
330 Main Street  
Hartford, Connecticut 06106  
(860) 471-8471  
(860) 586-8900 (fax)